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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

FEB 08 2012

U.I.L. 9100.00-00, 408A.00-00

T:EP:RA:T3

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Legend:

Taxpayer A = xxxxxxxxxxxxxxxxxxxxx

Individual P = xxxxxxxxxxxxxxxxxxxxx

Company F = xxxxxxxxxxxxxxxxxxxxxx

Company B = xxxxxxxxxxxxxxxxxxxxxx

Year 1 = xxxxxxxxxxxxxxxxxxxx

Year 2 = xxxxxxxxxxxxxxxxxxxx

Year 3 = xxxxxxxxxxxxxxxxxxxxx

Year 4 = xxxxxxxxxxxxxxxxxxxxx

Amount D = xxxxxxxxxxxxxxxxxxxxx

IRA X = xxxxxxxxxxxxxxxxxxxxx

Roth IRA Y = xxxxxxxxxxxxxxxxxxxxx

Dear xxxxxxxxxx:

This is in response to your letter dated xxxxxxxxxxxxx, submitted on your behalf, by your authorized representative, in which you request relief under section 301.9100-3 of the Procedure and Administration Regulations (Regulations).

The following facts and representations have been submitted in support of your request.

Taxpayer A established IRA X on xxxxxxxxxx of Year 1 with Company B. Taxpayer A has been a client of Company F for a long time and has relied upon the advice of Company F for her tax preparation and tax planning.

Based on the analysis of Taxpayer A's expected Year 2 financial situation, Company F believed that Taxpayer A's modified adjusted gross income (MAGI) would not exceed the then requisite threshold for converting IRA X to a Roth IRA. So, upon the advice of Company F, Taxpayer A and her husband decided to convert their traditional IRAs to Roth IRAs on xxxxxxxxxx of Year 2. However, in the middle of Year 3, based on revised Form 1065, Schedule K-1 *Partner's Share of Income, Deductions, Credits, etc.* (Schedule K-1) estimates, Company F discovered that Taxpayer A's MAGI for Year 2 would possibly exceed the $ threshold amount and as a result, Taxpayer A would probably not be eligible to convert IRA X to Roth IRA Y. Company F had no way of knowing that Taxpayer A's Year 2 MAGI would increase until the actual Schedule K-1 arrived in xxxxxxxxx of Year 3.

In Year 3, Company F advised Taxpayer A and her husband that they would have to recharacterize their Roth IRAs as traditional IRAs. In xxxxxxxxx of Year 3, Company F took the necessary steps to recharacterize Taxpayer A's husband's Roth IRA as a traditional IRA but, due to a processing oversight, inadvertently failed to recharacterize Taxpayer A's Roth IRA Y as a traditional IRA by the due date (with extensions) for filing Taxpayer A's Year 2 joint Federal income tax return.

Taxpayer A did not discover this error on the part of Company F until xxxxxxxx of Year 4 when Company F notified Taxpayer A that the IRA had not been recharacterized and advised her to request a ruling for an extension of time to recharacterize her Roth IRA as a traditional IRA.

Individual P, and employee of Company F, provided a written affidavit that Company F failed to complete the recharacterization.

The Service has not discovered Taxpayer A's failure to make a timely election.

Based on above facts and representations, you request a ruling that, pursuant to section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Roth IRA Y as a traditional IRA.

With respect to your ruling request, section 408A(d)(6) of the Code and section 1.408A-5 of the Federal Income Tax Regulations (I.T. Regulations) provide that, except as otherwise provided by the Secretary, a taxpayer may elect to recharacterize an IRA contribution made to one type of IRA as having originally been made to another type of IRA by making a trustee-to-trustee transfer of the IRA contribution, plus earnings, to the other type of IRA. In a recharacterization, the IRA contribution is treated as having been made to the transferee IRA and not the transferor IRA. This recharacterization election generally must occur on or before the date prescribed by law, including extensions, for filing the taxpayer's Federal income tax returns for the year of contributions.

Section 1.408A-5, Q&A -6 of the I.T. Regulations describes how a taxpayer makes the election to recharacterize the IRA contribution. To recharacterize an amount that has been converted from a traditional IRA to a Roth IRA: (1) the taxpayer must notify the Roth IRA trustee of the taxpayer's intent to recharacterize the amount, (2) the taxpayer must provide the trustee (and the transferee trustee, if different from the transferor trustee) with specified information that is sufficient to effect the recharacterization, and (3) the trustee must make the transfer.

For years prior to 2010, section 408A(c)(3)(B) of the Code provides, in relevant part, that an individual with an adjusted gross income (as modified within the meaning of subparagraph (c)(3)(C)) in excess of $100,000 for a taxable year is not permitted to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during that taxable year.

Section 1.408A-4, Q&A-2, of the I.T. Regulations relating to years prior to 2010, provides that an individual with MAGI in excess of $100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. Section 1.408A-4, Q&A-2 further provides that a married individual may convert a traditional IRA to a Roth IRA only if he and his spouse file a joint Federal Income Tax Return and the MAGI subject to the $100,000 limit for a taxable year is the MAGI derived from the joint return using the couple's combined income.

Sections 301.9100-1, 301.9100-2, and 301.9100-3 of the Regulations provide guidance concerning requests for relief submitted to the Service on or after December 31, 1997. Section 301.9100-1(c) provides that the Commissioner of Internal Revenue, in his discretion, may grant a reasonable extension of the time fixed by a regulation, a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin for the making of an

election or application for relief in respect of tax under, among others, Subtitle A of the Code.

Section 301.9100-2 of the Regulations lists certain elections for which automatic extensions of time to file are granted. Section 301.9100-3 generally provides guidance with respect to the granting of relief with respect to those elections not referenced in section 301.9100-2. The relief requested in this case is not referenced in section 301.9100-2.

Section 301.9100-3 of the Regulations provides that applications for relief that fall within section 301.9100-3 will be granted when the taxpayer provides sufficient evidence (including affidavits described in section 301.9100-3(e)(2)) to establish that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief would not prejudice the interests of the Government.

Section 301.9100-3(b)(1) of the Regulations provides that a taxpayer will be deemed to have acted reasonably and in good faith (i) if its request for section 301.9100-1 relief is filed before the failure to make a timely election is discovered by the Service; (ii) if the taxpayer inadvertently failed to make the election because of intervening events beyond the taxpayer's control; (iii) if the taxpayer failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) the taxpayer reasonably relied upon the written advice of the Service; or (v) the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(c)(1)(ii) of the Regulations provides that ordinarily the interests of the Government will be treated as prejudiced and that ordinarily the Service will not grant relief when tax years that would have been affected by the election had it been timely made are closed by the statute of limitations before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer A's ruling request requires the Internal Revenue Service to determine whether she is eligible for relief under the provisions of section 301.9100-3 of the regulations.

Taxpayer A was not aware of the fact that the attempted recharacterization of Roth IRA Y back to a traditional IRA had not been timely implemented until December of Year 4. She relied on Company F to accomplish the recharacterization, and Company F failed to complete the recharacterization by the deadline for doing so. Upon realizing this failure, Taxpayer A, in a timely manner, submitted this request for relief under section 301.9100 of the Regulations. Also, no tax years that would have been affected by the election to recharacterize Roth IRA Y, had it been timely made, are closed by the statute of limitations.

Under the set of circumstances described above, Taxpayer A satisfies the requirements of section 301.9100-3(b)(1) of the Regulations. Accordingly, we rule that, pursuant to clauses (i) and (v) of section 301.9100-3 of the Regulations, Taxpayer A is granted a period not to exceed 60 days from the date of this letter ruling to recharacterize Amount D of Roth IRA Y as a traditional IRA.

This letter assumes that the above IRAs qualify under either Code section 408 or Code section 408A at all relevant times.

This letter is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with your authorization on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxx, at xxxx xxxxxxxxxx.

Sincerely yours,

For: Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose

Cc: xxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxx
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